

CONFUSION OF LAW AND EQUITY

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In last autumn number of the *Juridical Review* a distinguished barrister maintains the thesis, that under the British Judicature Acts, assuming to abolish all distinction between Law and Equity, there has been, or will be, a fusion of Law and Equity, whenever and wherever "justice is administered by the courts without specific reference to any distinction between Law and Equity."

Barrister Hogg admits that, although these acts are a generation old, no complete fusion has yet occurred except in a single case, viz., *Chapman v. Smethurst* (1909), 1 K. B., 73, 927. In the other cases named and referred to (and they are many), while the Judicature Acts are recognized and enforced, and Equity given the preference in power, there is express reference by the courts to the existence of the two systems of jurisprudence and allusion to the distinctions between these systems, so that no one could prove by them that Law and Equity were fused.

The fusion of Law and Equity, so long hoped for by Hobbes and his disciples in England, was the fond dream of Field and his associate band of codifiers in America. And since there are only seven States which preserve separate courts (Chancery) for the administration of a separate system of Equity Jurisprudence, it may be commonly thought that in America the dream and prophecy of fusion of Law and Equity has been fulfilled.

This would specially be true in the "Code States," wherein, by the Reformed Procedure, there has been not only proclamation of the bans, but celebration of the nuptials between Law and Equity, so that they are henceforth one flesh, if not one spirit. To correct this common error is the object of this paper, and to show how in America instead of a fusion we have achieved hopeless Confusion of Law and Equity, which promises to be permanent.

Back in Blackstone's time, before the various courts of England had been all moulded by Act of Parliament into a single "High Court of Justice," before legislation had corrected manifest deficiencies of the Common law, and before the genius of Lord Mansfield had opened the Law Courts to the gladsome light of

Equity, the lines of jurisdiction between the rival courts of Common Law and of Equity were contentiously maintained, if not distinctly marked; and, then, if ever, Equity was a system of jurisprudence, rather than a collection of doctrines, topics and remedies, diverse and unrelated, which it now appears to be in many States, having only the nucleus of a common source—the High Court of Chancery, which Lord Bacon declared “was ordained to supply the deficiencies of the Common Law,” and Sir Henry Maine happily regarded as “one of the agencies by which law is brought into harmony with society.” Harmony there may be, but not by the fusion of Law and Equity. Detailed examination shall demonstrate the confusion.

With reference to the relations of Law and Equity, and their administration as parts of the American system of Jurisprudence, it must be noted that the courts of the United States, both Federal and State, naturally separate themselves into three great classes: (1) Courts of Law and Courts of Chancery in the same States, having separate cognizance of cases of Law and cases of Equity, and preserving substantially the old lines of distinction recognized and enforced a century ago in the English Court of Common Pleas and the High Court of Chancery. (2) A single court or system of courts, recognizing the distinctions between Law and Equity, as two great concurrent systems of jurisprudence, and by means of separate dockets or separate sides, administering both systems in separate cases, as is done in the Federal Courts. (3) The single system of courts of the Code States, wherein all distinctions between Law and Equity are abolished by statute.

These are to be examined in their order to illustrate the individual distinctions within the several classes. And first of the

States with Separate Chancery Courts.

Before examining these States severally let us attend to some general preliminary considerations.

Uniformity of Equity Jurisdiction does not exist in these States, but rather diversity because of the diverse legislation and judicial tendencies of their several assemblies and courts. Each State has full authority to create its own courts and to prescribe their jurisdiction. This power has been so freely exercised that it can hardly be said that Equity Jurisdiction is identical in any two States. Legislation may either contract or expand authority,

and thereby materially change the Inherent Jurisdiction. In most States both courses have been pursued, with the result that locally the original lines of this jurisdiction are obscured, and the boundaries of the domain of Equity greatly changed, here drawn in, and there set out, in whimsical diversity. For example, in many States the inherent trust jurisdiction of Equity has been much restricted, by abolishing express trusts; and, generally, the administration of estates of decedents and orphans has been transferred to Probate Courts; while in some States retaining the system of separate courts for Common Law and Equity, the latter have been given jurisdiction of all cases arising *ex contractu*.¹ In most States Equity Jurisdiction is conferred by statute in general terms;² in others, as in Maine, Massachusetts and Pennsylvania it seems to have been doled out grudgingly by piecemeal. The abolition by statute of all forms of action and all distinction between actions at Law and suits in Equity, effected in more than half of the States, called "Code States," and the substitution therein of "Reformed Procedure" has not operated to abolish Equity Jurisprudence in these States. The general effect has been rather to abolish law actions and retain equity procedure and pleading without materially changing the doctrines and rules of Law and Equity prevalent in the courts of England and America. Inasmuch as Equity Jurisdiction is the correlative of Common Law Jurisdiction—indeed, was formerly always asserted in every bill by the formal statement that "your orator is without remedy at law,"³ it is obvious that in most of the Code States this topic is of no practical interest. Jurisdiction of any case in Equity in these States does not—cannot depend upon absence of remedy at Law. Demurrer cannot lie for lack of such allegation or showing. If the plaintiff or petitioner shows by his petition a case for redress or relief, either legal or equitable, or both, the court in most of the Code States will entertain, hear and decide his case, and give him judgment or decree according to the facts of the case. The question in these States is the right to relief, conceding that plaintiff is in the right court; for, since there is but one Court for both Law and Equity, of course he can go to no other; nor in the full Code States, can he alter his form of action or change sides in the court. If he seeks what would be equitable relief under the old practice, the questions he must

¹ Tennessee Acts 1877, Ch. 97.

² Pomeroy Eq. Jur. § 285.

³ Barton's Suit in Equity, (Ingersoll) 57-102.

meet belong not to Equity Jurisdiction, but to Equity Jurisprudence.

New Jersey.—Most peculiar, and farthest removed from the Code States in jurisdiction and procedure, are those States having separate Chancery Courts and Chancellors to administer Equity in them, as a distinct system of jurisprudence. There are seven of them, naturally separable into two clusters, viz., Delaware, New Jersey and Vermont, in the northeast, and Alabama, Arkansas, Mississippi and Tennessee in the southwest. Of all these States the New Jersey system most resembles the old English in the dignity and precedence accorded to its Chancellor, the separate publication of its Law and Equity Reports, and in its adherence to the pleading and practice of the High Court of Chancery.¹ The Chancery Court of New Jersey, originally created in 1705, by ordinance of the royal Governor, Lord Cornbury, was revived and confirmed in 1770 by ordinance of Governor Franklin, and continued with unabated vigor and undiminished jurisdiction by the colonial constitution and legislation of 1776.² The original ordinance of Lord Cornbury empowered the "High Court of Chancery in the province of New Jersey," to hear and determine all causes and suits, brought in said Court * * * in such manner, and as near as may be according to the usage and custom of the High Court of Chancery of the Kingdom of England.³ The ordinances of Cornbury and Franklin made Lord Bacon's ordinances the law of this court. And the Chancellor has repeatedly declared in varied phrase, but always in the same substance, that the English practice, when not altered by statute, rule of court, or practice, is the law of this court.⁴ In the Chancery Court of New Jersey, then, as on the equity side of the Federal Court, we have an American counterpart of the English High Court of Chancery. And the practice and jurisdiction of the Court of Errors and Appeals in Chancery appeals is avowedly in conformity with that of the House of Lords.⁵

Delaware.—The constitution of Delaware (1792) created the Chancery Court of that State, and the office of Chancellor to hold the same,⁶ and gave it, in addition to special jurisdiction con-

¹ West v. Paige, 9 N. J., Eq. 203 (1852).

² 19 N. J. Eq. 577.

³ Id. 579.

⁴ Jones v. Davenport, 45 N. J. Eq. 77, 82.

⁵ R. R. Co. v. Mayor, 23 N. J. Eq. 516-17.

⁶ Const. Art. VI. § 3.

ferred by statute, "the general powers of the Court of Chancery," until otherwise provided by the legislature.⁷ This power of limitation the legislature has exercised to the same extent as Congress by forbidding the Chancellor "to determine any matter, wherein sufficient remedy may be had by Common Law or statute before any other court or tribunal of the State."⁸

Vermont.—In this State the judges of the Supreme Court are by statute created Chancellors, and authorized to administer Equity, and when sitting in Chancery "their powers and jurisdiction are co-extensive with the powers and jurisdiction of the Court of Chancery in England with the exceptions, additions and limitations created and imposed by the constitution and laws of the State."⁹ Whether the State properly falls in class one or two may be doubtful.

The Southwestern States.—The jurisdiction procedure and organization of the Chancery Courts of Tennessee, Alabama, Mississippi and Arkansas (recently established), though not identical, have family likeness and may all be treated together. They are held by Chancellors, and possess the usual power to grant relief in all civil cases in which a plain and adequate remedy may not be had in other judicial tribunals, including those wherein extraordinary process is necessary, and generally in all cases of an equitable nature.¹⁰ They may grant divorce and alimony, allot dower, and exercise jurisdiction in all cases involving the separate estates of married women, the estates of other persons *non sui juris*, and in other matters specially provided for by statute. In Alabama the Chancery Court has also jurisdiction in cases founded on a gambling consideration; in Mississippi of administration of minors' estates and of all matters testamentary; while in Tennessee the jurisdiction of Courts of Chancery has been extended by statute to all cases arising *ex contractu*. In general, it may be said, the powers and jurisdiction of the Courts of Chancery in these States have been more altered (usually extended) by statute than in the northeastern States. But this is also true of the powers, remedies and jurisdiction of the Courts

⁷ Id. § 13.

⁸ Rev. Stats. Cr. 95, § 1.

⁹ Rev. Laws, 1180, § 698.

¹⁰ Ala. Rev. Code (1886) §§ 720-1; Ark. Kirby's Dig. Title Chancery Courts; Miss. Rev. Code (1880) § 1820; Tenn. Const. Art. VI, § 1. Code 1858, §§ 4279-80.

of Law, with the result that there is a broader zone of concurrent jurisdiction in these States, and the lines of jurisdiction are not so sharply drawn as in the East.¹¹

Law and Equity Distinct In Single Court.

The Federal Courts are the leaders in this class. The comprehensive provision of the Federal Constitution is that the judicial power of the United States "shall extend to all cases in Law and Equity arising under this Constitution." This double judicial power is "vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." Whether the congress under this delegation of plenary authority might have ordained and established separate courts of Law and Equity is not now a profitable inquiry. The inferior courts ordained and established by the Judiciary Act of 1789, which has been the basis of the Federal jurisdiction and judicature for more than a century, were the Circuit Court and the District Court, both of which had equitable powers. Henceforth they will be exercised by the District Court, which succeeds the Circuit Court, as a court of general jurisdiction both in Law and Equity. When the Circuit Court of Appeals was ordained and established in 1891, by act of Congress under the "Inferior Courts" clause of the Constitution, it was given the same measure of Equity Jurisdiction by appeal as the Circuit Courts had under the original Judiciary Act (14). In speaking, therefore, of the Equity Jurisdiction of the Federal Courts, reference is made to that to be exercised by the District Courts of the United States under the Act of 1911. Be it further remembered that these courts are also courts of general law jurisdiction; and that thus they are courts of Law and Equity in the fullest comprehension.

But it must not be supposed that they hear cases of mingled law and equity, and by the same pleading and procedure, as occurs in the courts of the Code States, wherein all distinctions are abolished between actions at Law and suits in Equity. To the contrary, the Federal courts keep entirely separate actions at Law and suits in Equity, as much so as did the Court of Common Pleas and the High Court of Chancery in England a hundred years ago. This is effected by the device of having two sides to the Court—the Law side, and the Equity side; and between them

¹¹ Gibson, Suits in Chancery § 29.

there is no possible connection. Whoever enters on the Law side must remain there; he cannot cross the wall of division and sue for equitable relief. If he wants or needs equitable relief he must depart from the court on its law side, and enter it by the equity door on the other side, where he will be heard by the same Judge acting as Chancellor. Pleadings, process and procedure are all on the chancery model, which is almost a copy of that found in the old English High Court of Chancery; and the practice is prescribed by a code of Equity Rules promulgated by the Supreme Court of the United States, by which it was specially ordered that where not otherwise provided by rule or law, the Circuit Court should follow the practice of the High Court of Chancery in England. And thus we have on the equity side of the Courts of the United States an American High Court of Chancery.

The constitutional recognition of Law and Equity, as a common heritage of jurisprudence by American Anglo-Saxons, the early judicial interpretation of this constitutional phrase as a distinct recognition, in the fundamental law, of the double system of English judicature and jurisprudence, and the conservative character of the Federal judiciary, have all conspired to make and keep Equity a part of the "Common Law of America" by Anglo-Saxon inheritance, and to preserve in this Court, on its Equity side, an American counterpart of the English High Court of Chancery in jurisprudence, tradition, procedure and jurisdiction. Section 16, of the great "Judiciary Act" of 1789, gave legislative expression to the popular and professional will of the period, in a phraseology keenly manifesting the general idea, then prevalent in England and America, as to the boundary line of Equity Jurisdiction: "Suits in Equity shall not be sustained in either of the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law." And this is permanently imbedded in Federal law in section 723 of the Revised Statutes. Obviously, therefore, we have here a permanent limitation on the Equity Jurisdiction of the Federal Courts. And this is rendered immovable by the judicial application of these statutory words to the conditions existing at the passage of the Judiciary Act. This fixes the jurisprudence and practice of the Common Law Courts in 1789 as the boundary line of Equity

¹ West. v. Paige, 9 N. J. Eq., 203 (1852).

jurisdiction for all time, until or unless it is changed by Act of Congress. So much for the Federal Courts. Now for the States of this class:

The States that preserve, as do the United States, in a single court the distinctions between Common Law and Equity by retention of old remedies and procedure on separate sides and dockets thereof, and thus, in full or large measure, the Equity Jurisdiction are Florida, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, Oregon, Pennsylvania, Rhode Island, Virginia and West Virginia. It would be interesting to note in each State the causes of this peculiar method of judicature, as indeed would be the same historical study in States of the other classes. In every case it is a lesson in jurisprudence. But the subject is too large for this article, and it must suffice to say in a general way that it has existed in nearly all of them from their beginnings, and in some, as in Iowa, Kentucky and Oregon, has survived even the adoption of the Reformed Procedure. Probably in all States of this class the system owes its origin and continuance to conformity to the Federal system. It is important, however, to note that in few States only has the line of jurisdiction been maintained as rigorously as in the Federal Courts, and in some it is shadowy, indistinct, and at places far removed from the ancient boundaries. Indeed, the location of the jurisdiction line in the several States of this class requires close acquaintance with their respective statutes and decisions. A general view of each will suffice for our present purpose, and will serve to exhibit in this class the utter confusion of Law and Equity in the American Courts in the "Code States," as well as the "Common Law States."

Florida.—By constitution and statute "Circuit Courts have original jurisdiction in all cases of Equity."¹ They have likewise jurisdiction in all actions at law. In another section of its constitution, Florida shook off its Spanish inheritance of the Civil Law, and allied herself thoroughly with the English colonies by providing that the courts should, in all cases, not governed by statute, decide in accordance with the Common Law. In the absence of statutory definition and direction, therefore, the courts have followed the general lines of jurisdiction as maintained in the Federal Courts with few local variations.

¹ Const. Art. VI, § 8.

Illinois.—In Illinois by constitution “the Circuit Courts have jurisdiction in all causes in Law and Equity.”² And by the Revised Statutes it is provided that all courts having “jurisdiction as courts of Chancery, shall have power to proceed therein according to the mode herein provided; and, when no provision is made by this Act, according to the general usage and practice of Courts of Equity.”³ Under these provisions of law has developed in Illinois a double system of jurisprudence and jurisdiction closely resembling the Federal system, and the lines of Equity Jurisdiction are practically identical with those established in the High Court of Chancery.

Iowa.—This State, by code, early adopted the Reformed Procedure abolishing forms of action and substituting therefor a proceeding by civil action. But the same code singularly provided for two kinds of proceeding by civil action, viz: “ordinary” and “equitable,” and then enacted as follows: “Plaintiff *may* prosecute his action by equitable proceedings in all cases, where courts of Equity, before the adoption of this code, had jurisdiction, and *must* so proceed in all cases where such jurisdiction was exclusive.”⁴ This operates to require two sides or dockets in the courts, and to fix the line of Equity Jurisdiction where it is fixed in the Federal Courts, and to give the State courts power to hear and determine according to principles of Equity Jurisprudence, all cases wherein there was not a clear, adequate and unembarrassed remedy at Law.

Kentucky.—The same peculiarity of Equity Jurisdiction appears in Kentucky as in Iowa. There is a constitutional recognition of Law and Equity, a Code of Reformed Procedure, a single court and a single civil action, divided, however, into two classes, ordinary and equitable, with different rules of proceeding (not pleading) for each. The primary distinction is thus expressed in the statute: “Actions of which Courts of Chancery had jurisdiction before the first of August, 1851, *may* be equitable, and actions of which such jurisdiction was exclusive *must* be equitable.”⁵ But cases may be transferred for cause from the equity docket to the ordinary docket or *vice versa*.

² Const. Art. VI, § 12.

³ Hurd's Rev. Stat. (1889) Ch. 22, § 1.

⁴ Code (1873) § 2508.

⁵ Carroll's Code (1906) § 6, Sec. 1.

Maine.—Equity Jurisdiction is conferred by statutes enumerating the cases in which “the Supreme Judicial Court,” the court of general jurisdiction, shall have jurisdiction in Equity. The subjects embraced in all these statutes make a long list, including Trusts, Frauds, Accidents, Mistakes, Mortgages, Forfeitures and Penalties, Specific Performance, Cancellation, Reformation, and Injunction, Partnership, Accounting and Creditors’ suits,⁶ and “in all other cases where there is not a plain, adequate and complete remedy at Law.”⁷ Thus the Equity Jurisdiction here is the same as that exercised in the Federal Courts, *plus* that given by statute in other special cases.

Maryland.—In Maryland it is enacted that the Circuit Courts, which have original jurisdiction of law-suits, “shall have and exercise all the power, authority and jurisdiction, which the Court of Chancery formerly held and exercised, except in so far as the same may be modified by this code.”⁸ These modifications were insignificant, and the lines of jurisdiction are practically the same as the Federal lines.

Massachusetts.—If one should consult the statutes and judicial decisions of Massachusetts prior to 1877 upon the subject of Equity Jurisdiction he would be amazed at the narrowness of legislation and interpretation on such a liberal and elastic subject. But the Act of 1877 seems to indicate an entire change in legislative intention, which the courts could not misunderstand: “The Supreme Judicial Court shall have jurisdiction in equity in all cases and matters of equity, cognizable under the general principles of Equity Jurisprudence, and, in respect of all such cases and matters, shall be a court of general Equity Jurisdiction.”⁹ More appropriate words could hardly be found to express the legislative intention to give to this court the full measure of Equity Jurisdiction formerly exercised by the High Court of Chancery, concurrent as well as exclusive. And this intention has been appreciated and enforced by the Supreme Court in many cases.¹⁰

Michigan.—This is one of very few States, which in the matter of Equity Jurisdiction has left nothing to inference or im-

⁶ Rev. Stat. (1871) Ch. 77, §5.

⁷ Laws 1874, Ch. 175, p. 126.

⁸ Pub. Gen. Law (1888), Art. 16, § 70.

⁹ Laws 1877, Ch. 178, § 2.

¹⁰ *Niles v. Graham*, 181 Mass. 48.

plication, but has plainly expressed in written law the measure of such jurisdiction: "The powers and jurisdiction of the Circuit Courts in Chancery in and for their respective counties, shall be co-extensive with the powers and jurisdiction of the Court of Chancery in England, with the exceptions, additions and limitations created and imposed by the constitution and laws of this State."¹ With such comprehensive Equity Jurisdiction conferred by statute the precedents of the English and Federal Courts must aid materially in marking the line of boundary between Law and Equity.

New Hampshire.—Equity Jurisdiction in New Hampshire is conferred upon the "Supreme Court" (which is the style of its court of general jurisdiction) by a statute enumerating the classes of cases in which it shall have the powers of a court of Equity. This enumeration includes the general heads of Trusts, Fraud, Accident and Mistake; co-Partners and co-Owners; Mortgages and Dower; Waste and Nuisance; Contribution, Injunction, Specific Performance, and Discovery; and concludes, "and all other cases where there is not a plain, adequate and complete remedy at Law."² This statute has received liberal and illuminating interpretation in the courts; and thus practically the Equity Jurisdiction in this State is substantially identical with that of the Federal Courts.³

Oregon.—Here again is a State with a Code of Civil Procedure abolishing all forms of action at Law, which retains the distinction between actions at Law and suits in Equity; and to a fuller measure, even than some States retaining the Common Law procedure, in that the Equity Jurisdiction includes not only the Exclusive, but also the Concurrent Jurisdiction. The statute conferring this is in the following words: "The enforcement or protection of a private right, or the prevention or redress of an injury thereto, shall be obtained by a suit in Equity in all cases where there is not a plain, adequate and complete remedy at Law; and may be obtained thereby in all cases where courts of Equity have been used to exercise concurrent jurisdiction with courts of Law, unless otherwise specially provided in this chapter."⁴ This is more comprehensive than the Federal Judiciary Act, and for measure

¹ Howell's Stat. § 6611.

² Gen. Stats. (1867) Ch. 190, § 1.

³ *Craft v. Thompson*, 51 N. H. 536-42.

⁴ Code Civ. Proc. § 376.

of jurisdiction remits us to the rules of the High Court of Chancery.

Pennsylvania.—Equity Jurisdiction in the Keystone State is unique and peculiar. Originally no Chancery Court was established and no Equity Jurisdiction, worth mention, was conferred upon the Law Courts. These courts, moved by the same consideration, and motives as the early English Chancellors, assumed Equity Jurisdiction and exercised it in law-suits to prevent palpable injustice.⁵ After a half century of delay, the legislative purpose expanded, and Equity Jurisdiction was gradually conferred by piecemeal, until in 1857 the domain of Equity was nearly covered by general statutes of jurisdiction.⁶ But this statutory jurisdiction did not abridge or abolish the jurisdiction hitherto assumed by the Law Courts, and administered through Common Law forms.⁷ In Pennsylvania, therefore, there exists a double system of Equity, viz: (1) The jurisdiction assumed by the law courts in law suits to grant equitable relief, where the Law was powerless; (2) Jurisdiction conferred by statute upon the same courts to administer Equity, by appropriate procedure. This is "confusion worse confounded."

Rhode Island.—The Chancery powers conferred on the Supreme Court by statute enacted in pursuance of express constitutional grant⁸ are thus liberally formulated: "Exclusive cognizance and jurisdiction of all suits and proceedings whatsoever in equity with full power to make and enforce all orders and decrees therein and to issue all process therefor according to the course of Equity."⁹ A court thus specially endowed should have no hesitation in exercising plenary powers in Equity.

Virginia.—The Old Dominion confers Equity Jurisdiction in the following terse and total terms: "The Circuit Court of each County shall have jurisdiction in all cases in Chancery and all actions at Law."¹⁰ This completely covers the domains both of Law and Equity, and obviously refers to English standards for location of boundaries.

⁵ 1 Pom. Eq. Jur. § 340.

⁶ II Select Essays in Anglo-Am. Hist. 823.

⁷ Church v. Ruland, 64 Pa. 432.

⁸ Const. Art. VI, § 2.

⁹ Pub. Stat. (1882) Ch. 192, § 8.

¹⁰ Code (1887), §3058.

West Virginia.—Equally terse and comprehensive is the constitutional formula granting powers in West Virginia: "Circuit Courts shall have original and general jurisdiction of all matters at Law, and of all cases in Equity."¹¹ Here, too, the courts on their Equity side have the fullest measure of jurisdiction.

CODE STATES.—The subject of Equity jurisdiction has no practical interest in the States and provinces which have adopted the full Code of Reformed Procedure, whereby every action is actually made an action in Law and Equity, brought and pursued by Law and Equity systems in every civil case and court. The most of these codes, though not identical in form or effect upon Equity Jurisprudence, are uniform in abolishing not only the separate Courts of Law and Equity and the Law and Equity sides of the courts, but also the distinction between suits at Law and in Equity in the same court, and in thus obviating the necessity of inquiring or considering in what court or by what process the suit shall be brought, or what form of pleadings shall be employed. In such complete Code States it is not possible to go wrong in the matter of jurisdiction. There is but one house and one door for all plaintiffs and complainants to enter, only one reception room, and one course of treatment. It may be all Law or all Equity, or both commingled in form and substance; the court has power to hear and determine the controversy, and execute its judgment or decree and no question arises as to Equity. The States using this system of procedure are those not heretofore mentioned, and need no further notice than the caution that Equity, as a system of jurisprudence, has not failed, but has rather prevailed in them; for, generally, whenever there is a conflict between Law and Equity, the doctrines and maxims of the latter are dominant in all civil controversies in all their courts. It must not, however, be forgotten that some of the Code States have not abolished all distinctions between actions at Law and suits in Equity, but have been content to abolish all forms of action at Law, and to substitute a single civil action in all law cases. They have retained the old distinction between actions at Law and suits in Equity, and have generally named them "ordinary" and "equitable" suits or actions, in some cases permitting and in others requiring equitable suits to be brought and conducted according to Chancery Practice, and keeping separate Law

¹¹ Const. Art. VIII, § 12.

and Equity dockets, as is done in the Federal Courts. In such Code States Equity Jurisdiction is still a live subject, and has been treated in a previous section in the paragraphs relating to Iowa, Kentucky, and Oregon.

Only the expert lawyer in each State can fully appreciate the practical extent of Chancery Jurisdiction and Procedure therein. But enough has been detailed to show the abounding variety of jurisdiction and proceeding, even in States of the same class; and to assure teachers and students, authors and publishers, that the fusion of Law and Equity is not in sight in America. Whether the existing confusion is permanent, time alone can determine.

Henry H. Ingersoll.